

STATE OF MICHIGAN  
COURT OF APPEALS

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PAMELA ANN RANGLES and PAUL RANGLES,

Plaintiffs-Appellants,

v

LATONYA HUDSON and CITY OF DETROIT,

Defendants-Appellees.

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UNPUBLISHED

February 19, 1999

No. 205623

Wayne Circuit Court

LC No. 97-709152 NO

Before: Gribbs, P.J., and Saad and P. H. Chamberlain,\* JJ.

MEMORANDUM.

Plaintiffs appeal by right the trial court's order granting summary disposition for defendants on the ground of res judicata. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This Court's review of summary disposition decisions in general, and applications of the doctrine of res judicata in particular, is de novo. *Energy Reserves, Inc v Consumers Power Co*, 221 Mich App 210, 216; 561 NW2d 854 (1997). For res judicata to apply, defendants must establish: (1) the former suit was decided on the merits, (2) the issues were resolved in the former suit, either because they were actually litigated or because they might have been presented in the former suit, and (3) both actions involved the same parties or their privies. *Sloan v Madison Heights*, 425 Mich 288, 295; 389 NW2d 418 (1986); *Energy Reserves, supra* at 215-216.

Here, the summary disposition of plaintiffs' former lawsuit constitutes a judgment on the merits. *Roberts v City of Troy*, 170 Mich App 567, 577; 429 NW2d 206 (1988). While this lawsuit may involve a new issue or legal theory not previously raised in the former suit, e.g., the gross negligence exception to governmental immunity, the doctrine of res judicata applies to all claims arising out of the same transaction or occurrence that could have been raised in previous lawsuit but were not, i.e., where the same facts or evidence are essential to the maintenance of the two actions. E.g., *Jones v State Farm Ins Co*, 202 Mich App 393, 401; 509 NW2d 829 (1993); *Mazzola v Vineyard Homes, Inc*,

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\* Circuit judge, sitting on the Court of Appeals by assignment.

54 Mich App 608, 613-614; 221 NW2d 406 (1974). See also *Eaton Co Bd of Rd Comm'rs v Schultz*, 205 Mich App 371, 380 n 5; 521 NW2d 847 (1994). Here, plaintiffs' present and former lawsuits are based upon the same operative facts. Finally, although defendant Hudson was not named as a party in plaintiffs' former suit, she may assert the defense of res judicata as if she were a party named in that suit because plaintiffs' previous lawsuit alleged a claim of vicarious, "respondent superior" liability against her employer based upon her conduct. See, e.g., *DePolo v Gregg*, 338 Mich 703, 710-712; 62 NW2d 441 (1954); *Darin & Armstrong v Ben Agree Co*, 88 Mich App 128, 134; 276 NW2d 869 (1979).

Affirmed.

/s/ Roman S. Gribbs

/s/ Henry William Saad

/s/ Paul H. Chamberlain